

The Junqueras Saga Continues

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Just before the Christmas break, the [Grand Chamber of the European Court of Justice](#) (ECJ) ruled that elected MEPs enjoy the concomitant immunities offered under EU law from the moment the election results are officially declared. This implies that Spain unlawfully prevented Mr. Oriol Junqueras from travelling to Strasbourg in order to take part in the inaugural session of the European Parliament. As argued in a [previous blogpost](#), this ruling is of fundamental significance for the understanding of representative democracy in the EU legal order. Whereas the European Parliamentary elections are organised at the national level, Member States cannot prevent that elected candidates take up their seats. The immunity granted to Members of European Parliament (MEPs) applies from the time of the declaration of the election results and can only be lifted after a decision of the European Parliament.

Notwithstanding this clear message from the ECJ, the [Spanish Supreme Court](#) decided that Junqueras will not be released from prison. The main argument is that the preliminary ruling only concerned the situation when Mr. Junqueras was held in provisional detention but that, in the meantime, the situation significantly changed since he has been effectively convicted in October 2019 to a 13-year term of imprisonment and a disqualification from holding any public office or exercising any public function for the same period. In view of the Spanish Supreme Court, respect for this sentence necessarily implies that Junqueras cannot serve as an MEP.

Arguably, this interpretation ignores the text and spirit of the ECJ ruling of December 2019. It is true that the ECJ did not explicitly rule on the implications of Junqueras' final conviction, since this went beyond the scope of the preliminary questions in that particular case. Nevertheless, at the end of its preliminary judgment, in paragraph 93, the ECJ observed that:

It is for the referring court to assess the effects to be attached to the immunities enjoyed by Mr Junqueras Vies in possible other proceedings [...] in respect for Union law and, in particular, the principle of loyal cooperation referred to in the first subparagraph of Article 4 (3) TEU. In this context, it is to take into account, in particular, the elements recalled in points 64, 65, 76 and 82 to 86 of this judgment.

The latter paragraphs stress the direct nature of European Parliamentary elections and the objectives of European Parliamentary immunity. It seems that the Spanish Supreme Court did not really take this into account in its decision of 9 January 2020. Moreover, the final result is very paradoxical in the sense that the violation of Mr. Junqueras' rights under EU law at the time when he was in temporary custody prevents him from relying on EU law at a later stage. If he would have been granted permission to travel to Strasbourg in July 2019, a right which he had under EU law

as observed by the ECJ in its December 2019 decision, he would currently not be in prison. This is very obvious if his situation is compared to that of Carles Puigdemont and Toni Comin, the Catalan politicians residing in Belgium. For them, the ECJ judgment of December 2019 implies that they can effectively take their seats in the European Parliament from 13 January 2020 onwards. Of course, their immunity can still be waived but this is subject to a decision of the European Parliament. In this respect, it is noteworthy that the [Spanish Supreme Court](#) already issued such a formal request.

What next?

The contradiction between the logic of the ECJ's judgment of December 2019 and the decision of the Spanish Supreme Court of 8 January 2020 forms a new challenge for the EU legal order, in the sense that it puts the relationship between EU law and Spanish national law under strain. In principle, this is not entirely new. Also in the past, highest courts of other Member States not always unequivocally followed the case law of the ECJ. However, the political sensitivity of the Catalan question and the broader contestation of the primacy of EU law in Member States such as Poland and Hungary raise the stakes of this controversy. Respecting the binding nature of preliminary rulings of the ECJ in a spirit of loyal cooperation is of crucial importance for the effective functioning of the EU legal order.

The question is, of course, how the EU institutions will respond to the decision of the Spanish Supreme Court. So far, the [European Commission](#) only announced that it will 'study the legal situation'. One option could be to contemplate an infringement procedure, based upon the argument that the Spanish Supreme Court violated its duties under Art. 267, para. 3 TFEU along the lines of its reasoning in Case [C-416/17](#). In that case, the Commission successfully argued that the French *Conseil d'état* should have made a preliminary reference to the ECJ in order to clarify the consequences of its previous case law. Arguably, the Spanish Supreme Court should also have consulted the ECJ in order to clarify the implications of the December 2019 decision for the new situation of Mr. Junqueras. Whether or not the Commission will take this road remains to be seen. For the time being, it only stressed that Member States have to respect the binding nature of preliminary rulings without providing any additional information.

The [European Parliament](#), for its part, seems to accept the outcome of the Spanish Supreme Court's decision as a matter of fact. Its President, Davide Sassoli, already announced that the European Parliamentary mandate of Oriol Junqueras terminated as a result of the decision of the Spanish Supreme Court. Whereas this decision is based upon the Parliament's obligation to respect the outcome of national judicial procedures, it remains somewhat contradictory to the logic of the EU's principle of representative democracy as outlined in the ECJ's preliminary ruling of December 2019. Of course, simply ignoring this observation is the easiest option in order to avoid an open conflict between the requirements of EU law and Spanish national law. However, the question is whether this may not be a dangerous precedent at a time when the EU's values of democracy and respect for the rule of law are already under pressure.

